

## Internal Revenue Service

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CC:CORP:BO1

PLR-135355-09

Date:

September 24, 2009

In Re:

Company =

Newco =

New LLC =

Company LLC =

Holding Company =

Shareholder 1 =

Shareholder 2 =

Shareholder 3 =

Exchange =

Bankruptcy Court =

Date 1 =

Date 2 =

Date 3 =

Newco  
Preferred =

Newco Series A  
Warrants =

Newco Series B  
Warrants =

Note 1 =

Note 2 =

State =

a =

b =

c =

d =

e =

f =

g =

Dear

This letter responds to your July 29, 2009 letter requesting that we supplement our private letter ruling dated July 8, 2009 (PLR 130073-09) (the "Prior Ruling"). The information submitted for consideration in this supplemental request, and additional information submitted in letters dated July 31, August 26, and September 17, 2009 is summarized below. Capitalized terms not defined in this ruling have the meanings assigned to them in the Prior Ruling.

The rulings contained in this letter are based upon facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the information,

representations, and other data may be required as part of the audit process.

The Prior Ruling addresses certain Federal income tax consequences of certain transactions under § 368(a)(1)(G) of the Internal Revenue Code, and other Code provisions.

### **Summary of Supplemental Facts**

Newco is a State corporation that was formed on Date 1 in connection with the Exchange, which was effected on Date 2 pursuant to an order of the Bankruptcy Court issued in connection with Company's bankruptcy proceedings. The Prior Ruling concludes that the transfer by Company of substantially all of its assets to Newco in exchange for Newco stock and other consideration in the Exchange, together with the subsequent liquidation of Company for U.S. federal income tax purposes that will occur no later than Date 3, will qualify as a reorganization under § 368(a)(1)(G) (the "Reorganization"). As a result of the Reorganization, Newco became the common parent of an affiliated group of corporations that will file a consolidated U.S. federal income tax return on a calendar year basis (the "Newco Consolidated Group"). In addition, Newco owns (directly and indirectly) stock in numerous foreign corporations and interests in other foreign and domestic entities.

Following the Reorganization, Newco has outstanding the following equity interests: (i) Newco common stock; (ii) Newco Preferred stock; (iii) Newco Series A Warrants; and (iv) Newco Series B Warrants. Newco's common stock is held in the following approximate proportions by the following shareholders: a% by Shareholder 1; b% by Shareholder 3; c% by Shareholder 2; and d% by Company. The Newco Preferred stock is held in the following approximate proportions by the following shareholders: (i) e% by Shareholder 3; (ii) f% by Shareholder 1; and (iii) g% by affiliates of Shareholder 2. Company holds all of the Newco Series A Warrants and Shareholder 3 holds all of the Newco Series B Warrants.

Also following the Reorganization, Newco has debt obligations outstanding, including Note 1 and Note 2, owed to Shareholder 1 and Shareholder 3, respectively.

### **Supplemental Transactions**

At the time of the Reorganization, it was determined that the legal ownership of Newco would not accommodate certain legal and regulatory considerations. As a result, Newco has determined that the formation of a holding company structure for Newco's business should be undertaken as soon as practicable after the Reorganization, as described below in the "Proposed Transaction."

- (i) Newco will form a wholly owned State corporation ("Holding Company").
- (ii) Holding Company will form New LLC as a wholly owned State limited

liability company ("LLC"), which will be a disregarded entity for U.S. federal income tax purposes (a "disregarded entity").

(iii) New LLC will form a wholly owned State corporation ("Merger Sub").

(iv) Merger Sub will merge with and into Newco, with Newco surviving (the "Newco Merger"). Pursuant to State law, in the Newco Merger, the Newco stock and warrants held by Shareholder 1, Shareholder 2, Shareholder 3, and Company will be automatically converted into Holding Company stock and warrants (the "Holding Company common stock," "Holding Company Series A Preferred Stock," "Holding Company Series A Warrants," and "Holding Company Series B Warrants"), in the same proportions that the Newco stock and warrants were held prior to the Newco Merger. In addition, the Merger Sub stock held by New LLC will be automatically converted into Newco stock.

(v) On the day following the completion of the Newco Merger, Newco will convert into a State LLC and change its name to Company LLC. Company LLC will be a disregarded entity.

(vi) Company LLC will distribute its equity interests in certain businesses and foreign subsidiaries, joint ventures, and investments to New LLC. Company LLC will also distribute and assign, and New LLC will assume, Note 1 and Note 2.

### **Supplemental Representations**

As a result of the Proposed Transaction, Newco makes the following representation to reaffirm certain representations made by its predecessor, Company, in connection with the Prior PLR:

(a) The representations (other than representations (h), (k), and (m) as modified below) and caveats set forth in the Prior PLR remain in effect for purposes of that ruling and this supplemental ruling, except that references to "Newco" are replaced by references to "Holding Company" as of the effective date of the Proposed Transaction.

In addition, Newco makes the following representations to modify representations (h), (k), and (m) as made in connection with the Prior PLR:

(b) Other than in connection with the Proposed Transaction, there is no plan or intention for Newco or Holding Company, or for any party related to Newco or Holding Company (within the meaning of Treas. Reg. § 1.368-1(e)(4)), to redeem or acquire any Newco stock or Holding Company stock issued in the Reorganization or the Proposed Transaction, respectively, either directly or through any transaction, agreement, or other arrangement with any other person.

(c) Except for the Sale Assets and in connection with the Proposed Transaction, Newco had, and Holding Company has, no plan or intention to sell or otherwise dispose of any of the assets of Company or Newco, respectively, acquired in the transaction, except for dispositions made in the ordinary course of business, or transfers described in section 368(a)(2)(C) or Treas. Reg. § 1.368-2(k).

(d) Other than in connection with the Proposed Transaction, Newco had, and Holding Company has, no plan or intention to liquidate or merge with or into another corporation subsequent to the Reorganization and the Proposed Transaction, respectively.

In connection with its request for a supplemental ruling, Newco makes the following representations regarding the Proposed Transaction:

(e) The fair market value of the Holding Company stock and warrants received by each Newco shareholder and warrant holder, respectively, will be approximately equal to the fair market value of the Newco stock and warrants surrendered in exchange therefor in the Proposed Transaction.

(f) As a result of the Proposed Transaction, Newco's shareholders and warrant holders will own all of the outstanding Holding Company stock and warrants, and will own such interests solely by reason of their ownership of Newco stock and warrants immediately prior to the Proposed Transaction.

(g) Holding Company has no plan or intention to issue additional stock in the Proposed Transaction.

(h) As a result of the Proposed Transaction, Holding Company will possess the same assets and liabilities as those possessed by Newco immediately prior to the Proposed Transaction.

(i) The liabilities of Newco assumed (within the meaning of § 357(d)) by Holding Company plus the liabilities, if any, to which the transferred assets were subject, were incurred by either Newco or Company in the ordinary course of its business or were incurred in connection with Company's bankruptcy proceedings, and were associated with the assets transferred.

(j) Newco will pay its own expenses, if any, incurred in connection with the Proposed Transaction.

(k) Newco and Holding Company are not and, at the time of the Proposed Transaction, will not be under the jurisdiction of a court in a title 11 or similar case within the meaning of § 368(a)(3)(A).

### **Supplemental Rulings**

Based solely on the information submitted and the representations made herein and submitted with the Prior Ruling, we rule as follows:

1. The Proposed Transaction will not adversely affect the Prior Ruling, which will remain in full force and effect.
2. The Proposed Transaction will be treated as: (i) the transfer by Newco of all of its assets to Holding Company in exchange for the assumption of all of Newco's liabilities and all of the Holding Company stock and Holding Company warrants; and (ii) the distribution by Newco in complete liquidation of all such Holding Company stock and Holding Company warrants to its shareholders and warrant holders in exchange for all of the outstanding stock and warrants in Newco.
3. The Proposed Transaction will qualify as a reorganization under § 368(a)(1)(F). Newco and Holding Company will each be "a party to a reorganization" under § 368(b).
4. No gain or loss will be recognized by Newco's shareholders and security holders upon their exchange of Newco common stock, Newco Preferred stock, Newco Series A Warrants, and Newco Series B Warrants for Holding Company common stock, Holding Company Preferred stock, Holding Company Series A Warrants, and Holding Company Series B Warrants, respectively (§ 354(a)).
5. No gain or loss will be recognized by Newco upon the transfer of its assets to Holding Company in exchange for Holding Company common stock, Holding Company Preferred stock, Holding Company Series A Warrants, and Holding Company Series B Warrants (§ 361(a)).
6. No gain or loss will be recognized by Holding Company upon the receipt of Newco's assets in exchange for Holding Company common stock, Holding Company Preferred stock, Holding Company Series A Warrants, and Holding Company Series B Warrants (§ 1032(a)).
7. The basis of each asset of Newco held by Holding Company will be the same as the basis of that asset in the hands of Newco immediately prior to the Proposed Transaction (§ 362(b)).
8. The holding period for each asset of Newco received by Holding Company will include the period during which such asset was held by Newco and Company (§ 1223(2)).
9. The basis of the Holding Company common stock, Holding Company Preferred stock, Holding Company Series A Warrants, and Holding Company Series B Warrants received by each Newco shareholder or warrant holder will be the same as the basis of the Newco common stock, Newco Preferred stock, Newco Series A

Warrants, and Newco Series B Warrants for which they will be deemed exchanged (§ 358(a)).

10. The holding period of the Holding Company common stock, Holding Company Preferred stock, Holding Company Series A Warrants, and Holding Company Series B Warrants received in the Proposed Transaction will include the holding period of the Newco common stock, Newco Preferred stock, Newco Series A Warrants, and Newco Series B Warrants received in exchange therefor (§ 1223(1)).

11. Holding Company will succeed to and take into account the tax attributes of Newco described in § 381(c), including the foreign tax credit carryovers of Newco, subject to reduction with respect to excluded cancellation of indebtedness income of Company (section 381(a), Treas. Regs. §§ 1.381(a)-1, 1.1502-28, and 1.108-7(c), and Revenue Ruling 80-144, 1980-1 C.B. 80). These items will be taken into account by Holding Company subject to the conditions and limitations specified in §§ 381, 382, 383, 384, 904, and 1502, and the Regulations thereunder.

12. The tax year of the Newco affiliated group will not end on the date of the Proposed Transaction and such tax year will continue with Holding Company as the successor to Newco in its capacity as the common parent of the affiliated group of corporations of which Newco was the common parent (Treas. Regs. §§ 1.381(b)-1(a)(2) and 1.1502-75(d)(2)(i)).

### **Caveats**

No opinion is expressed about the Federal income tax treatment of the Proposed Transaction under other provisions of the Code or regulations or the Federal income tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transaction that are not specifically covered by the above rulings.

### **Procedural Matters**

This ruling is directed only to the taxpayers who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter ruling must be attached to the Federal income tax return of each party involved in the Proposed Transaction for the taxable year in which the Proposed Transaction is completed. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their returns that provides the date and control number of the letter ruling.



In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

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Lisa A. Fuller  
Senior Counsel, Branch 1  
Office of Associate Chief Counsel  
(Corporate)